IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7642 OF 2006.

M/s Volga Ice Cream & anr. ... Petitioners.
V/s.
Maniklal Futurmal Baldota & ors... Respondents.

Shri C.U. Singh i/b Punit B. Anand for the petitioners.

Shri R.D. Soni i/b Ram & Co. for the respondent No.1.

Shri Ashok B. Tanjani for respondent Nos. 2 & 3.

CORAM: R.C.CHAVAN,J

DATED: 11th January 2007.

P.C.:

. Rule returnable forthwith. By consent heard finally.

2. By this petition, the petitioners take exception to the order passed by the 14th Ad hoc Additional District Judge, Pune, on an application under Order 41 Rule 27 of the Code of Civil Procedure, whereby the learned Judge refused to permit the petitioners to produce copies of 7 documents. These 7 documents are as follows:

i). Certified copy of the judgment in Civil Appeal No. 976/97.

ii). Certified copy of Exh. 58 along with order in Civil Appeal No.976/97.

iii). Certified copy of Exh 66 in along with order in Civil Appeal No.976/97.

iv). Certified copy of Ex.63 in RCS 534/88 (Civil Appeal No.976/97).

v). Certified copy of Ex.73 (Evidence Affidavit) along with cross of Maniklal Futurmal Baldota in Civil Suit No.1594/94.

vi). Certified copy of deposition of DW 1 (Ex.77) which was allowed as additional evidence in Civil Appeal No.976/97.

(vii). Certified copy of DW 2(Ex.82) which was allowed as additional evidence in Civil Appeal No. 976/97.

3. According to the learned Counsel for the petitioners, approach of the learned Additional District Judge was hypertechnical and he should have allowed production of documents since they could not have been produced by the petitioners before the trial Court even after exercising due diligence since some of the documents like judgment in Civil Appeal No. 976/97 did not exist when the trial Court was seized of the matter.

4. Learned Counsel for the respondents submits that if the petitioners want to urge that certain documents could not have been produced before the trial Court inspite of due diligence, petitioner ought to have clarified as to when he came in possession of the said documents. Since the petitioners have not stated when they secured these documents and how these documents were relevant for deciding the question in controversy,

according to learned Counsel for respondent No.1, the learned Judge has rightly rejected the application.

5. So far as documents at serial Nos. (i) to (iv), viz. Judgment in Civil Appeal No. 976/97, certified copies of Ex.58 and 66 in Civil Appeal No. 976/97, Ex.63 in RCS No. 534/88 are concerned, there should not be any difficulty since these documents pertain to litigation between the same parties. Therefore, parties may not have any defence to say that they did not have knowledge of the same. In any case these documents are certified copies of the record of the Court. Therefore, to that extent, learned Additional District Judge should not have found it difficult to allow the application.

6. Learned Counsel for the petitioner submits that the document at Sr.No.5 (Evidence Affidavit) is filed by the respondent himself and, therefore, there should not be any difficulty in allowing production of copy of affidavit and cross-examination of the respondent on record. Evidence tendered by the parties in judicial proceeding is of no use unless the person concerned is confronted with the admission sought

to be relied upon. Copies of evidence from one case cannot be allowed in another case and, therefore, petitioner's contention, that copy of evidence of the respondent should be allowed, cannot be entertained. The same holds good about copies of the evidence of the petitioner. In view of this, the learned Additional District Judge should have seen that production of documents at sr.Nos. (i) to (iv) was justified under O.41 R.27 (1)(a)(a) of the C.P.C. To that extent, he should have allowed the application. In view of this, petition is partly allowed. The impugned order is set aside and petitioner's application for production of documents at sr.Nos. (i) to (iv) viz.

> i). Certified copy of the judgment in Civil Appeal No. 976/97.
>
> ii). Certified copy of Exh. 58 along with order in Civil Appeal No.976/97.
>
> iii). Certified copy of Exh 66 in along with order in Civil Appeal No.976/97.
>
> iv). Certified copy of Ex.63 in RCS 534/88 (Civil Appeal No.976/97).

is allowed.

7. Needless to say that while deciding the appeal, the learned Judge shall independently consider relevance and probative value of these

documents.

8. Apprehension expressed by the learned Counsel for the respondents that the petitioners may tender oral evidence on documents at sr.No. (i) to (iv) is unfounded because these documents are allowed to be produced by the petitioners as part of the record of the Court. Therefore, there would not be occasion to tender oral evidence in respect of these documents.

9. Rule is made absolute in terms of this order.

10. The Additional District Judge shall endeavour to dispose of the appeal as early as possible, having due regard to the fact that the appeal is pending for last 7 years.

(R.C. CHAVAN,J.)